

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Complaint of MCI WorldCom, Inc.)
against New England Telephone and Telegraph Company)
d/b/a Bell Atlantic-Massachusetts for breach of) DTE 97-116
interconnection terms entered into under Sections 251)
and 252 of the Telecommunications Act of 1996)

REPLY COMMENTS OF RCN-BECOCOM, L.L.C.

RCN-BecoCom, L.L.C. (“RCN-BecoCom”), by undersigned counsel and pursuant to the Memorandum dated May 23, 2001 to All Parties and Commenters to D.T.E. 97-116, respectfully submits these reply comments regarding the impact on this proceeding of the Federal Communications Commission’s (“FCC”) recent *ISP Traffic Order*.¹

As RCN-BecoCom explained in its initial Comments, there are two matters that the Department must resolve as a result of the *ISP Traffic Order*: the retrospective review of the interconnection agreements underlying the original WorldCom and Global NAPs complaints in this proceeding, and the prospective application of the *ISP Traffic Order*’s federal intercarrier compensation regime in Massachusetts.

ARGUMENT

I. WORLDCOM COGENTLY ARGUES THAT THE INTERCONNECTION AGREEMENTS UNDERLYING THIS DISPUTE REQUIRE VERIZON TO PAY COMPENSATION FOR TERMINATION OF ISP-BOUND TRAFFIC

In its initial Comments, WorldCom cogently explains how the *ISP Traffic Order* resolves the issues that have been held in abeyance in Massachusetts pending the outcome of the FCC

¹ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, FCC 01-131, CC Dkt. Nos. 96-98, 99-68 (rel. Apr. 27, 2001) (“*ISP Traffic Order*” or “*Order*”).

proceeding on intercarrier compensation for ISP-bound traffic. WorldCom Comments at 10-22. RCN-BecoCom concurs in WorldCom's analysis, which completely refutes the argument asserted by Verizon in its initial Comments. As WorldCom explains, the parties agreed to a specific definition of "local" traffic for which the parties would pay reciprocal compensation. This definition did not exclude ISP-bound traffic. WorldCom Comments at 21-22.

Further, as RCN-BecoCom explained in its initial comments, the FCC said that, under its own precedent, the term "local call" "could be interpreted as meaning . . . traffic subject to local rates" in addition to "traffic that is *jurisdictionally* intrastate."² Further, the FCC explained, going forward "[w]e also refrain from generically describing traffic as 'local' traffic because the term 'local,' not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly is not a term used in section 251(b)(5) or section 251(g)."³ Thus, the FCC plainly recognizes that prior to the *ISP Traffic Order* (at a minimum), the term "local traffic" could be construed precisely as RCN-BecoCom and the other participating CLECs have construed it in this proceeding.

Finally, under the terms of the *ISP Traffic Order*, it would be "unwise as a policy matter" and "patently unfair" for Verizon to receive reciprocal compensation for traffic it terminates when a traffic imbalance is in Verizon's favor, but not to pay compensation to other carriers that terminate calls to ISPs.⁴ In order to rectify this inequity, as long as Verizon has received any terminating compensation from other local carriers, including CMRS carriers, the Department should require Verizon to compensate carriers that terminate ISP-bound traffic. Accordingly, the

² *Id.* at ¶ 45 (italics in original, underlining added).

³ *Id.* at ¶ 34 (emphasis added).

⁴ *Id.* at ¶ 89.

Department should now rule that Verizon owes reciprocal compensation for ISP-bound traffic under the terms of the WorldCom and Global NAPs interconnection agreements.⁵

II. VERIZON MUST COMPENSATE TERMINATING CARRIERS AT THE RATES AND RATIOS SPECIFIED IN THE *ISP TRAFFIC ORDER*

The Department must also implement the *ISP Traffic Order* on a prospective basis in Massachusetts. At the time of its initial Comments, RCN-BecoCom had not been advised by Verizon whether Verizon had agreed to accept the terms of the federal intercarrier compensation regime in Massachusetts. Verizon has now provided RCN-BecoCom with notice of such intent. It is now necessary for the Department to assist the parties in implementing the federal intercarrier compensation requirements in Massachusetts.

As an initial matter, the FCC stated in the *ISP Traffic Order* that “[t]he intercarrier compensation regime we establish here . . . does not alter existing contractual obligations, except to the extent parties are entitled to invoke contractual change-of-law provisions.”⁶ Thus, incorporation of the federal regime must follow the contractual provisions for amending interconnection agreements, including approval by this Department.

For those parties whose agreements may have expired, the Department should assist the parties in their renegotiations by explaining how the federal regime will apply in Massachusetts if the parties cannot agree to terms. Verizon may not seek to apply the provisions of the *ISP Traffic Order* that allow an ILEC “to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep.”⁷ Massachusetts has never ordered carriers to exchange ISP-bound traffic on a bill and keep basis. Instead, it has vacated those orders that

⁵ The terms of the interconnection agreement between Verizon and RCN BecoCom regarding reciprocal compensation are substantially similar to those in the WorldCom agreement underlying this dispute.

⁶ *ISP Traffic Order* at ¶ 82.

required payment of compensation for ISP-bound traffic, leaving no alternative arrangement in its place. In the words of the Department, “Although MCI WorldCom and Bell Atlantic may still disagree about reciprocal compensation obligations under their interconnection agreement, there is – *post* February 26, 1999 – no valid and effective D.T.E. order still in place to resolve their dispute. Unsatisfying as it may be to say so, all that remains is a now-unresolved dispute.”⁸

Accordingly, as of June 14, 2001, the federal regime governs ISP-bound traffic in Massachusetts. Under that regime, non-ISP bound traffic ⁹ is compensated at the contract rate or state-approved rate for reciprocal compensation. Except as otherwise provided by an interconnection agreement, ISP-bound traffic is compensated at the levels described in the *ISP Traffic Order*. For the first six months after June 14, 2001, the rate for ISP-bound traffic is \$.0015. The Department should rule that, on a prospective basis, and to the extent changes of law are incorporated into existing interconnection agreements, carriers will be compensated for ISP-bound traffic at the rates and traffic exchange ratios in the *Order*.

III. CONCLUSION

In order to resolve the “now-unresolved dispute” regarding intercarrier compensation for ISP-bound traffic for the period prior to the effective date of the *ISP Traffic Order*, the Department should heed the arguments asserted by WorldCom and RCN-BecoCom in their initial Comments. The Department should order the carriers to conduct a retrospective true-up of compensation for traffic to ISPs at the same rates as Verizon has been paid to terminate local and CMRS traffic.

⁷ *Id.* at ¶ 89.

⁸ D.T.E. 97-116-C (May 19, 1999) at p. 26.

⁹ ISP-bound traffic is presumed to be all traffic in excess of a ratio of 3:1 (terminating minutes to originating minutes). This presumption is rebuttable by either party. *ISP Traffic Order* at ¶ 79.

On a prospective basis, existing intercarrier compensation arrangements must be revised, if at all, pursuant to the terms of interconnection agreements. To assist parties renegotiating expired agreements, to the extent the parties are otherwise unable to agree, the Department must follow the terms of the FCC's *ISP Traffic Order* and rule that the federal rates and traffic exchange ratios applicable for ISP-bound traffic apply in Massachusetts.

Respectfully submitted,

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